

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
E. C. AND P. M. BRAEUNIG)

For Appellants: E. C. Braeunig, in pro. **per.**

For Respondent: Crawford H. Thomas
Chief Counsel

Julie Eagan
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of **E. C.** and **P. M. Braeunig** for refund of personal income tax and penalties in the total amounts of \$29.53, \$30.36, \$41.83 and \$47.99 for the years 1959, 1960, 1961 and 1962, respectively.

During the period from 1959 through a portion of 1966 **E. C. Braeunig** was a member of the United States Air Force. He was stationed in Germany from 1959 through 1962 and then was transferred to Texas. Evidently **Mr. Braeunig's** wife and children accompanied him to both of these locations. In 1966 **Mr. Braeunig** retired from the Air Force and he and his family moved to San Diego, California.

On September 28, 1966, appellants filed resident joint returns for the years 1959 through 1965, and paid the amount of California personal income tax which these returns indicated was due.. The Franchise Tax Board assessed late filing penalties with respect to the returns, and **Mr. and Mrs. Braeunig** also paid these amounts.

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Subsequently, appellants filed a timely 1966 return and paid the amount of the indicated tax liability.

On April 15, 1968, appellants filed claims for refund for the years 1959 through 1966 on the ground that Mr. Braeunig was a nonresident of California during that period. The Franchise Tax Board granted the claims for the years 1963 through 1966. However that board determined that the claims for the years in question were barred because they had not been filed within the periods specified by section 19053 of the Revenue and Taxation Code. Whether this determination was correct is the sole issue of the instant appeal.

Section 19053 provides:

No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, or unless before the expiration of such period the Franchise Tax Board allows a credit, makes a refund or certifies such overpayment to the State Board of Control for approval of the refunding or the crediting thereof.

Appellants state that they were unfamiliar with the law, and contend that their position is supported by certain statutes which allow military personnel extensions of filing time. However, ignorance of the law does not excuse the delinquent filing of claims for refund. (See Appeal of Cleo V. Mott, Cal. St. Bd. of Equal., Aug. 7, 1963.) Sections 18434 and 18470 of the Revenue and Taxation Code provide for certain extensions of the filing period for military personnel who have been stationed outside the United States or "Americas." But these extensions are too short to help the appellants here.

We considered a very similar fact situation in the Appeal of Robert A. and Nancy R. Jacobs, Cal. St. Bd. of Equal., decided August 3, 1965, and upheld the determination of the Franchise Tax Board. The language of section 19053 is explicit and does not provide for any exceptions. We must hold that appellants' claims for refund for the years in question were barred by this statute of limitations.

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O R D-E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of E. C. and P. M. Braeunig for refund of personal income tax and penalties in the total amounts of \$29.53, \$30.36, \$41.83 and \$47.99 for the years 1959, 1960, 1961 and 1962, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of February, 1970, by the State Board of Equalization.

George H. Hume, Chairma
John W. Lynch, Member
Paul R. Jones, Member
Robert H. Davis, Member
_____, Member

ATTEST:

J. H. Hume, Secretary